

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

CITY OF ELK CITY and ELK CITY PUBLIC)	
WORKS AUTHORITY,)	
)	
Plaintiffs,)	
)	
v.)	Case No. CV-06-35-F
)	
BECKHAM COUNTY RURAL WATER)	
DISTRICT NO. 3,)	
)	
Defendant.)	

**MOTION TO CERTIFY QUESTIONS OF
STATE LAW TO THE OKLAHOMA SUPREME COURT**

The Plaintiffs, the City of Elk City and Elk City Public Works Authority (hereinafter “the Plaintiffs”), respectfully move the Court for an order certifying the state law questions in this case to the Oklahoma Supreme Court.

This motion is made *as an alternative* to the Plaintiffs’ Motion to Remand, filed concurrently with this motion.

In support of this Motion, the Plaintiffs state the following:

The case at hand presents a question concerning the state constitutionality of a state statute. The Oklahoma statute that purportedly authorizes a rural water district to borrow federal money and thereby invoke federal monopoly protection under 7 U.S.C. § 1926(b) is unconstitutional under the Oklahoma constitution and under Oklahoma constitutional law as pronounced by the Oklahoma Supreme Court in *Comanche County Rural Water District No. 1 v. City of Lawton*, 501 P.2d 490 (Okla. 1972), and *Rural Water & Sewer Dist. No. 4 v. Coppage*, 2002 OK 44, ¶ 13, 47 P.3d 872, 874-75.

Certification to the State Supreme Court by a court of the United States is appropriate under Okla. Stat. tit. 20 § 1602, which grants the Oklahoma Supreme Court the power to “answer

a question of law certified to it by a court of the United States.” Okla. Stat. tit. 20 § 1602. Additionally, this is the correct procedure for reference of state law questions by the federal courts when abstention may not be warranted. “Certification is a means of getting authoritative answers to state law questions in situations in which *Pullman*-type abstention calls for them.” Wright, Miller, & Cooper, *Federal Practice and Procedure: Jurisdiction* 2d § 4248, p.158 (2nd ed. 1988). The U.S. Supreme Court, in *Bellotti v. Baird*, stated that “[i]n the absence of an authoritative construction [of the state statute], it is impossible to define precisely the constitutional question presented.” 428 U.S. 132, 147 (1976). On this basis, the *Bellotti* Court held that “the District Court should have certified to the Supreme Judicial Court of Massachusetts appropriate questions concerning the meaning of” the state statute. *Id.* at 151. If there is a state statute allowing for the answering of certified questions, as there is in Oklahoma, “[t]hat path is open to this Court and to any court of appeals of the United States.” *Lehman Brothers v. Schein, Investors Diversified Services, Inc.*, 416 U.S. 386, 390 (1974). As such, the United States District Court for the Western District of Oklahoma, if it decides not to remand this action to the District Court of Beckham County, State of Oklahoma on abstention or other grounds, should certify the constitutionality of Okla. Stat. tit. 82 § 1324.10 to the Oklahoma Supreme Court. Such a decision by the Oklahoma Supreme Court would substantially aid this Court in its determination of the issues raised by the removed action.

The Plaintiffs respectfully suggest that the certified question should be stated to the Oklahoma Supreme Court as follows:

Whether a rural water district organized under Oklahoma statutory law, Okla. Stat. tit. 82, § 1324.1 *et seq.*, holds the authority under Oklahoma law, and more specifically under Okla. Stat. tit. 82, § 1324.10, to borrow funds from the federal government if the borrowing of funds from the federal government results in the monopoly protection found in 7 U.S.C. § 1926(b).

Whether Okla. Stat. tit. 82, § 1324.10 is unconstitutional under Oklahoma law, to the extent that it purports to authorize an Oklahoma rural water district to borrow funds from the federal government in a manner that would invoke the monopoly protection found in 7 U.S.C. § 1926(b).

Whether the Oklahoma Supreme Court's decisions in *Comanche County Rural Water Dist. No. 1. v. City of Lawton*, 1972 OK 117, 501 P.2d 490, and *Rural Water & Sewer Dist. No. 4 v. Coppage*, 2002 OK 44, 47 P.3d 872, require a determination that an Oklahoma rural water district lacks the authority to borrow funds from the federal government in a manner that would invoke the monopoly protection found in 7 U.S.C. § 1926(b).

WHEREFORE, the Plaintiffs respectfully request an order from the Court certifying these questions of state law to the Oklahoma Supreme Court.

Respectfully submitted,

/s/ James C. Milton

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of February, 2006, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Steven M. Harris, Esq.
Michael D. Davis, Esq.
John N. Goodman

/s/ James C. Milton

James C. Milton